

## **9 FAM 40.35(a) Notes**

### **9 FAM 40.35(a) N1 Background and Summary of INA 212(a)(3)(E)(i)**

(TL:VISA-77; 3-30-93)

Pub. L. 95-549 of October 30, 1978, created INA 212(a)(33) which was renumbered as INA 212(a)(3)(E)(i) by the Immigration Act of 1990, Pub. L. 101-649. INA 212(a)(3)(E)(i) renders ineligible for a visa any alien who participated in the persecution of any person because of race, religion, national origin, or political opinion during the period from March 23, 1933, to May 8, 1945, under the direction of or in association with the Nazi Government of Germany or an allied or occupied government.

### **9 FAM 40.35(a) N2 Aliens Ineligible Under INA 212(a)(3)(E)(i)**

(TL:VISA-77; 3-30-93)

All aliens who are suspected of falling within the purview of INA 212(a)(3)(E)(i) shall be processed in accordance with the instructions contained in these Notes and section 9 FAM 40.35(a) Procedural Notes.

#### **9 FAM 40.35(a) N2.1 Aliens Presumed Ineligible**

(TL:VISA-77; 3-30-93)

Many members of organizations found to be “criminal organizations” by the International Military Tribunal at Nuremburg have been listed in CLASS under Code 83 (which will soon become “P3E1” under the new coding system). All such CLASS entries, as well as all other aliens who were members of one or more of these organizations, are presumed to be ineligible under INA 212(a)(3)(E)(i). It must be borne in mind that this is a presumption only. While such membership does not automatically render the alien ineligible for a visa, he or she has the burden of establishing that, despite being a member of a designated criminal organization, he or she did not participate in activities which would fall within the purview of INA 212(a)(3)(E)(i). “Criminal organizations” are identified and characterized in N6 below.

#### **9 FAM 40.35(a) N2.2 Others Suspected of Ineligibility**

(TL:VISA-77; 3-30-93)

Aliens who engaged in activities proscribed by INA 212(a)(3)(E)(i) are ineligible for visas regardless of whether or not they were members of one

of the “criminal organizations” described in 9 FAM 40.35(a) N6 below. Evidence of possible ineligibility may be found in:

- (1) The visa application;
- (2) The applicant’s statements;
- (3) A check of post files; or
- (4) In outside information available to the consular officer.

### **9 FAM 40.35(a) N3 Availability of Records From Berlin Document Center**

(TL:VISA-77; 3-30-93)

The Berlin Document Center (BDC) serves as the repository for a substantial portion of the original official archives, records, and files of the former Nazi Party and some of its most important affiliated organizations. Although not complete, the records maintained by the Berlin Document Center were meticulously compiled and the data contained therein are considered accurate and reliable. The records of all aliens who are Code 83 (or P3E1) entries in the CLASS system are on file at the BDC, as are those of many other Nazi Party members and members of the “criminal organizations” listed in 9 FAM 40.35(a) N6 below. [For instructions on requesting document summaries from the BDC, see section 9 FAM 40.35(a) PN1.]

### **9 FAM 40.35(a) N4 Security Advisory Opinion Required**

(TL:VISA-77; 3-30-93)

INA 212(a)(3)(E)(i) is extremely complex and requires ready access to historical research materials that are not usually available at Foreign Service posts. The Department’s advisory opinion is therefore mandatory in the case of any applicant listed in CLASS under Code 83 (or P3E1), and in any case in which the possibility of ineligibility otherwise exists based upon information available at post, through the BDC, or developed during the visa interview. [For advisory opinion procedures, see section 9 FAM 40.35(a) PN4].

### **9 FAM 40.35(a) N5 No Relief Available**

(TL:VISA-46; 8-26-91)

Consular officers are reminded that there is no waiver relief available to either nonimmigrants or immigrants who are ineligible under INA 212(a)(3)(E)(i).

## **9 FAM 40.35(a) N6 Criminal Organizations**

(TL:VISA-77; 3-30-93)

The Leadership Corps of the Nazi Party, the Gestapo, the SD, and the SS were found by the International Military Tribunal to be criminal organizations. The Tribunal concluded that these groups were utilized for purposes involving the persecution and extermination of the Jews, brutalities and killings in concentration camps, the administration of the slave labor program, excesses in the administration of occupied territories, and the mistreatment and murder of prisoners of war.

### **9 FAM 40.35(a) N6.1 Leadership Corps of Nazi Party (NSDAP)**

(TL:VISA-77; 3-30-93)

The Leadership Corps was the governing cadre of the Nazi Party (NSDAP). Membership at all levels was voluntary. The Corps included full-time employees ranging from heads of the various main departments and offices attached to the Party's Reich Directorate to persons with territorial jurisdiction over a single area as large as a country.

### **9 FAM 40.35(a) N6.2 GESTAPO—Geheime Staatspolizei (German Secret State Police)**

(TL:VISA-77; 3-30-93)

In 1936, the German police forces were centralized under Himmler and reorganized into two new offices: The Gendarmerie and municipal police and the Sicherheitspolizei, consisting of the criminal police and the political police. The Gestapo was the active branch of the political police and had authority to commit persons to concentration camps. During the war years, the Gestapo also supervised prisoners of war.

### **9 FAM 40.35(a) N6.3 SD—Sicherheitsdienst des Reichsfuehreres SS (Security Service of Police Organization of Nazi Party)**

(TL:VISA-77; 3-30-93)

The SD, which began as an intelligence agency, was a security service engaged in police work in Germany and behind the lines in occupied territories.

## **9 FAM 40.35(a) N6.4 SS-Schutzstaffel der NSDAP (Defense Echelon of Nazi Party)**

(TL:VISA-77; 3-30-93)

The SS was established as an elite body guard and security force for top Nazi leaders, replacing by the mid-1930's the Nazi Storm Troopers (the SA or Sturmabteilung), a mass paramilitary organization which played an important role in Hitler's rise to power. By the end of the war, the SS included the regular and security police as well as divisions of combat troops. For membership purposes, the SS was divided into two categories: The Allgemeine SS (General SS) and the Waffen SS (Armed or Military SS).

### **9 FAM 40.35(a) N6.4-1 Allgemeine SS**

(TL:VISA-77; 3-30-93)

While the Allgemeine SS was officially charged with other, non-criminal duties, some Allgemeine SS members did, in fact, staff and administer agencies which were responsible for carrying out policies of persecution throughout Germany and occupied Europe. These agencies included the:

- (1) SD;
- (2) Gestapo;
- (3) Office of the Reich Commissar for the Strengthening of German Nationhood;
- (4) Race and Settlement Main Office;
- (5) Regionally based SS and Police Leaders;
- (6) Order Police; and
- (7) SS Death's Head units.

### **9 FAM 40.35(a) N6.4-2 Waffen SS**

(TL:VISA-77; 3-30-93)

The Waffen SS developed out of the pre-war Special Service Troops (SS Verfügungstruppe), whose original purpose was to provide an ideologically loyal military response to a potential coup against the Nazi regime by the German Armed Forces. With the outbreak of the war, these units were expanded into an SS army which the Nazi leadership hoped

would one day replace the traditional German Army. While the Waffen SS did include many front-line combat units, its members were deeply implicated in the persecution, mass murder, and other war crimes committed against innocent civilians and prisoners of war. The Waffen SS was directly involved in countless deportation, shooting, and anti-partisan actions, the purpose of which was the tracking down and extermination of persons and groups slated for death by the Nazi regime. It supplied personnel to and assisted the Einsatzgruppen which rounded up people for forced labor, concentration camps, and executions. Many Waffen SS units were composed of renegades and collaborators recruited from among the peoples of the occupied territories.